

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DENNIS MCKEITHAN,)	
)	
Plaintiff,)	Civil Action No. 06-965
)	Judge Lancaster
v.)	Magistrate Judge Bissoon
)	
JEFFREY BEARD, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff is a state prisoner whose civil rights case has been remanded by the United States Court of Appeals for the Third Circuit. Most of the claims made by McKeithan have been dismissed, or disposed of by way of summary judgment. What remains after the Court of Appeals remanded the matter are: (1) McKeithan's Eighth Amendment challenge to the conditions of confinement in the LTSU; (2) McKeithan's Eighth Amendment claim against Defendants Meyers and Yarcgwer with respect to their treatment of McKeithan's eczema; and (3) McKeithan's due process claim against Meyers and Yarcgwer regarding deduction of co-payments for preexisting conditions (Doc. 142).

Defendants Meyers and Yarcgwer have filed a Motion for Summary Judgment (Doc. 168) and Plaintiff's response is due October 18, 2009 (Doc. 145). The remaining Defendants have not moved for summary judgment on the conditions of confinement claim.

Plaintiff asserts that it was improper to permit summary judgment motions after the case was remanded from the Court of Appeals, and that this is evidence of bias. Plaintiff seeks recusal of the undersigned and Judge Lancaster (Doc. 174). The Court of Appeals for the Third Circuit did not, as Plaintiff asserts, direct that this case proceed directly to trial. Thus, there is no

error, and certainly no evidence of bias, in the Court's order and the Motion to Recuse (Doc. 174) is DENIED.

Plaintiff's Motion for an Extension of Time to File Opposition Brief to Medical Defendants' Motion for Summary Judgment (Doc. 173) is GRANTED IN PART. The issues are not numerous or complex, and a 30 day extension is sufficient. Plaintiff's response is now due November 18, 2009.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Rule 72.C.2 of the Local Rules for Magistrates. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

Dated: September 30, 2009

s/Cathy Bissoon
CATHY BISSOON
UNITED STATE MAGISTRATE JUDGE

Cc:
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